

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHY BARNETT

Claimant

VS.

MCI BUSINESS SERVICES

Respondent

AND

CONTINENTAL INSURANCE COMPANY

Insurance Carrier

ORDER

Claimant appealed Administrative Law Judge John D. Clark's April 6, 1999, Award and April 7, 1999, Award Nunc Pro Tunc. The Appeals Board heard oral argument by telephone conference on September 16, 1999.

APPEARANCES

The claimant appeared by her attorney, Dale V. Slape of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Stephen J. Jones of Wichita, Kansas.

RECORD

The Appeals Board has considered the record listed in the Award with the exception that the transcript of the preliminary hearing dated April 18, 1995, should be changed to April 18, 1996.

STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award.

ISSUES

Claimant appeals from an award that limited her to a 20 percent permanent partial disability of the left arm, excluding the shoulder joint, as contained in the scheduled injury statute.¹ Claimant contends she developed right upper extremity symptoms from overuse of her right upper extremity to compensate for the left upper extremity injury. Accordingly, claimant contends she is entitled to permanent partial disability benefits based on a whole body injury instead of a scheduled left arm injury.

Conversely, respondent requests the Appeals Board to affirm the Award. Respondent contends the medical opinions contained in the record of orthopedic surgeons J. Mark Melhorn, M.D., Jay Stanley Jones, M.D., and Paul D. Lesko, M.D., all limit claimant to a permanent injury to the left upper extremity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board makes the following findings and conclusions:

The Appeals Board finds the Award should be affirmed. The Appeals Board agrees with the Administrative Law Judge's analysis of the evidence as set forth in the Award. Additionally, the Appeals Board finds the Administrative Law Judge's findings of fact and conclusions of law are detailed and supported by the record. It is not necessary to repeat those findings and conclusions of this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

Orthopedic surgeon Jay Stanley Jones, M.D., treated claimant from August 2, 1994, through February 5, 1997. He testified that claimant had no right arm complaints while he was treating her. The doctor diagnosed claimant with left reflex sympathetic dystrophy and assessed claimant with a 20 percent functional impairment of the left upper extremity. Orthopedic surgeon Paul D. Lesko, M.D., was appointed by the Administrative Law Judge to perform an independent medical examination of claimant on February 20, 1996. He did not testify, but his report was entered into the record. He found claimant sustained only a permanent injury to her left upper extremity. The doctor's diagnosis was left reflex sympathetic dystrophy and he found claimant had a 23 to 25 percent permanent functional impairment of the left upper extremity. At the request of the respondent, orthopedic surgeon J. Mark Melhorn, M.D., examined and evaluated claimant on January 11, 1999.

¹See K.S.A. 44-510d(a) (13) .

He diagnosed claimant with reflex sympathetic dystrophy of the left upper extremity but found no permanent injury to the right upper extremity. The doctor found claimant had a 22 percent functional impairment of the left upper extremity.

At the request of her attorney, claimant was examined and evaluated by Pedro A. Murati, M.D., a rehabilitation and physical medicine physician, on April 13, 1998. In contrast, the doctor diagnosed claimant with bilateral carpal tunnel syndrome, reflex sympathetic dystrophy on the left and right de Quervain's. The doctor assessed claimant with a left upper extremity impairment of function of 14 percent and a right upper extremity impairment of function of 10 percent and combined those for a 14 percent whole body functional impairment.

The Appeals Board concludes the more persuasive medical evidence limits claimant to a left upper extremity injury. The Appeals Board also agrees with and adopts the Administrative Law Judge's finding that claimant sustained a 20 percent permanent partial disability of the left upper extremity.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's April 6, 1999, Award and April 7, 1999, Award Nunc Pro Tunc should be, and are hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Stephen J. Jones, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director